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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re ROBERT M., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT M.,

Defendant and Appellant.

E034624

(Super.Ct.No. J183667)

OPINION

APPEAL from the Superior Court of San Bernardino County. Diane I. Anderson, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified.

Ellen M. Matsumoto, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Meagan J. Beale, Supervising Deputy Attorney General, and Lise Jacobson, Deputy Attorney General, for Plaintiff and Respondent.

Minor admitted that he committed one count of robbery (Pen. Code, § 211); in exchange, a carjacking allegation (Pen. Code, § 215, subd. (a)) was dismissed with an agreement by the parties that it could be considered for disposition. Following a contested dispositional hearing, the juvenile court committed minor to California Youth Authority (CYA) for a maximum period of five years four months. On appeal, minor contends (1) the juvenile court abused its discretion in committing him to CYA, and (2) the disposition order must be amended to award him one additional day of predisposition credit. We agree that the disposition order must be corrected but reject minor's first contention.

I

FACTUAL¹ AND PROCEDURAL BACKGROUND

Minor was initially declared a ward of the court and placed on formal probation in September 2002, after he admitted to committing one count of resisting arrest (Pen. Code, § 148, subd. (a)(1)). In return, the remaining allegation of threatening a peace officer (Pen. Code, § 71) was dismissed.

Around 12:08 a.m. on August 22, 2003, minor and three other males approached the victim while he was pumping gas into his car at a gas station. Minor demanded the victim give him his wallet and car keys. Minor tried to forcibly retrieve the victim's wallet from the victim's rear pants pocket and became visibly frustrated when he was unable to do so. Minor ordered the victim to get his wallet from his pocket. After the

¹ The factual background is taken from the probation officer's reports.

victim handed his wallet to minor, minor stated, “If you stay calm, we won’t shoot you.” Minor and his cohorts then got inside the victim’s car and drove away.

The victim flagged down an officer and informed her of the circumstances. Subsequently, another officer stopped the victim’s car. Minor and his cohorts fled on foot but were eventually apprehended a short time later. Minor later informed a probation officer that he was “drunk” at the time of the offense and that one of his friends stated beforehand, while they were eating at a fast food restaurant, that they needed a car and would get one from the first person they saw.

On August 25, 2003, a subsequent section 602 petition was filed, alleging that minor committed robbery (Pen. Code, § 211) and carjacking (Pen. Code, § 215, subd. (a)). Minor admitted the robbery charge, and in return the carjacking charge was dismissed. Minor was thereafter committed to CYA.

II

DISCUSSION

A. *CYA*

Minor contends the juvenile court abused its discretion in committing him to CYA without considering less restrictive alternatives, such as placement in a local facility. We disagree. The record clearly demonstrates the court considered the alternatives but rejected them as inappropriate before arriving at the decision to commit minor to CYA.

We review a placement decision only for abuse of discretion. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The court will indulge all reasonable inferences to support the decision of the juvenile court. (*Ibid.*) An appellate court will not lightly

substitute its decision for that of the juvenile court and the decision of the court will not be disturbed unless unsupported by substantial evidence. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617.) The juvenile court may consider a commitment to CYA without previous resort to less restrictive placements. (*In re Asean D.*, at p. 473.) Lastly, “the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public.” (*Ibid.*) Since retribution must not be the sole reason for punishment, there must be evidence demonstrating probable benefit to the minor and the inappropriateness or ineffectiveness of the less restrictive alternatives. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) Evidence relevant to the disposition includes, but is not limited to, the age of the minor, the circumstances and gravity of the offenses committed, and the minor’s previous delinquent history. (Welf. & Inst. Code, § 725.5.)

After a review of the entire record, we conclude there is substantial evidence here to support the commitment to CYA. Minor, who is 17 years old, is in serious need of educational services or vocational training. His school records indicate that he is severely credit deficient and that he missed 25 out of a total 91 possible school days. His discipline report noted 40 referral entries by 17 different school employees from October 1999 to August 2003 for defiance; fighting with other students; associating with a gang; possession of a BB gun; failure to abide by school rules; disrespect; using profanity; verbal threats; possession of marijuana, pipe and lighter; and possession of a knife. Minor is also in dire need of gang awareness counseling, anger management counseling,

substance abuse counseling, and victim awareness counseling. In addition, the record shows that minor has not taken responsibility for his actions and denies his involvement in the incident. The record sufficiently supports the court's determination that minor would benefit by the reformatory, education, discipline or other treatment provided by CYA.

Minor's principal argument against the appropriateness of his CYA commitment is that the juvenile court failed to fully explore less restrictive alternatives. Contrary to minor's assertions, the record here demonstrates that the court considered less restrictive alternatives but rejected them as inappropriate.

Minor has committed serious criminal offenses and has a history of failure to cooperate with school authorities, the probation department, and his parents. The court considered placement but found it inappropriate under the circumstances of this case. As the court noted, minor's age, the circumstances and gravity of the current offenses, minor's previous delinquent history, the benefits of CYA on minor, and the safety of the community all establish that minor requires commitment in a more structured and secure environment than placement or probation can offer. The court properly found a less restrictive alternative to be unfeasible.

The record need only show, as it does here, probable benefit to the minor from commitment to CYA and that less restrictive alternatives were considered and rejected.

(In re George M. (1993) 14 Cal.App.4th 376, 379; In re Teofilio A., supra, 210

Cal.App.3d at p. 576.) The court articulated reasonable concerns for the community and minor's rehabilitation, concerns that can only be addressed by CYA given minor's

history and current offenses. We thus conclude the juvenile court did not abuse its discretion by committing minor to CYA.

B. *Correction of Disposition Order*

The juvenile court awarded minor 46 days of predisposition credit. Minor contends, and the People agree, that he is entitled to one additional day of custody credit. Since minor was taken into custody on August 22, 2003, and remained in custody until the dispositional hearing concluded 47 days later, on October 7, 2003, we agree. The dispositional order should therefore be amended accordingly.

III

DISPOSITION

The dispositional order is modified to reflect that minor is entitled to 47 days of precommitment custody credit. In all other respects, the judgment is affirmed.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

GAUT
J.